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Subject: FYI Only: Water articles in the Press

Excess nutrient levels seen nationwide

June 22, 2017

From the Gulf of Mexico, to the Chesapeake Bay, Lake Champlain and the Utah Lake, concerns are growing nationwide about excess nutrient levels and the harmful algae blooms and other adverse impacts that result -- though the issue appears to be on the back burner for EPA. The agency has stepped back from its early Obama-era efforts to address nutrients, when it created a landmark, multi-state cleanup plan, known as a total maximum daily load (TMDL), for the Chesapeake Bay. The plan drew significant concerns from agriculture and other industry officials, who feared it would set a precedent for the Mississippi River and other large watersheds.

While federal courts upheld the legality of the TMDL, EPA nevertheless rejected a petition from environmentalists to develop a similar TMDL for the Mississippi Basin.

Nevertheless, recent reports indicate growing concerns nationwide over nutrient levels. According to the *Washington Post*, federal scientists announced June 21 that the "dead zone" in the Gulf of Mexico is expected to "reach an area of nearly 8,200 square miles in July, more than 50 percent larger than its average size." The dead zone, an area where oxygen levels are limited due to excess nitrogen and phosphorous levels, is harmful to fish and shellfish.

Meanwhile, an assessment released by the Chesapeake Bay Foundation June 22 found that Maryland and Virginia are generally on track to meet milestones in EPA's landmark plan for limiting nutrient levels in the Bay but Pennsylvania remains far off course, according to Delmarva.com. "Maryland is slipping behind schedule on removing pollutants from its stormwater runoff and septic system discharges but is otherwise largely on pace in its cleanup of the Chesapeake Bay," the news service reported. "The group's annual assessment also applauded Virginia's progress but called on Pennsylvania to make good on its pledge last year to 'reboot' its cleanup strategy after years of foot-dragging," it

added.

While nutrient levels in the Bay have been reduced by 54 percent over the past decade and the waterbody is showing other signs of environmental progress, the publication reported, it noted that the Bay cleanup effort still faces threats due to the Trump administration's proposed budget for fiscal year 2018, which is seeking to eliminate funds for EPA's Chesapeake Bay cleanup program. "Given the uncertainties around federal leadership on this effort, we urge the General Assembly and the Hogan administration to tackle the challenges head-on for our benefit and for the benefit of future generations of Marylanders," Alison Prost, executive director of the Bay Foundation's Maryland office, said in a statement.

Officials in other states are raising similar concerns. In Utah, [KSL.com reports](#), Erica Gaddis, the newly appointed director of the state's Division of Water Quality, told a legislative panel that in response to potentially high levels of algae in Utah Lake and other state waters, officials have implemented "an early warning system with three algae sensors providing data at 15-minute increments, as well as new equipment for measuring cyanotoxins at the Department of Environmental Quality's laboratory."

Gaddis said the state hopes the approach can act as a model for other state waters after high algae levels, caused in part by excess nitrogen levels, in 2016 persisted for months longer than usual.

She noted that Utah had declined to adopt EPA guidelines that were issued in 2002. And in the Northeast, EPA, along with the leaders of New York, Vermont and Quebec, earlier this week pledged to support an updated plan for limiting nutrient runoff and taking other steps to improve water quality in Lake Champlain, according to [Vermont Public Radio](#).

Deborah Szaro, acting administrator in EPA Region 1, told the service that the agency is seeking to limit potentially toxic algal blooms whose growth is encouraged by nutrient runoff.

"We don't want those to happen. They ruin the beauty of the lake and impair our recreation and our use of that lake and that beautiful resource," she said.

But she said that limiting phosphorus levels in the lake is a challenge, especially for officials in Vermont. "We need a 34 percent reduction in Vermont alone, along with continued reductions in New York and Quebec, to meet our goals down the line," she said.

Court Urged To Reject EPA 'Determination' In Novel Water Standards Suit

Environmentalists are urging a federal court to reject EPA's recent "determination" that changes to California's rules during the state's drought did not amount to a change in water quality standards (WQS), in a bid to set a precedent that could expand the universe of state water rules that are subject to mandatory federal review under the Clean Water Act (CWA).

Court denies rehearing on Puerto Rico cities' coal ash bans

The 1st Circuit let stand a decision that blocked local governments' ability to ban coal ash disposal after state regulators issue rules allowing the practice.

D.C. Circuit sets argument in Trump '2-1' order lawsuit

Judge Randolph Moss schedules Aug. 10 arguments in litigation over President Trump's order that requires EPA to repeal two rules for every new measure issued.

Judge signals looming decision on CWA coal ash appeal timing

A federal district court judge could soon decide whether a fight over Clean Water Act restrictions on coal ash disposal will move quickly to appellate court.

Excess nutrient levels seen nationwide

In today's Ewire: From the Gulf of Mexico, to the Chesapeake Bay and beyond, concerns are growing nationwide about excess nutrient levels -- though the issue appears to be on EPA's backburner.

D.C. Circuit sets argument in ozone implementation rule suit

The U.S. Court of Appeals for the District of Columbia Circuit will hear argument Sept. 14 in litigation over the Obama EPA's rule for implementing the 2008 ozone air standard.

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"EPA's 'determination' does not perform the review called for by the CWA, but simply continues the agency's attempt to evade its nondiscretionary duty through a contorted and unsupportable application of the 'effects test,'" environmentalists say in a June 13 summary judgment motion.

"Because EPA did not, in fact, review the [Water Resources Control Board's] orders as revisions to water quality standards, while the 'effects test' shows that they are, the Court should enter summary judgment in Plaintiffs' favor."

The suit, *Natural Resources Defense Council (NRDC) v. Scott Pruitt, et al.*, filed in April 2016 in U.S. District Court for the Northern District of California, alleges that EPA violated the CWA by allowing WRCB to advance temporary urgency change petitions (TUCPs) for the Sacramento River Basin and San Joaquin River Basin, known as the Central Valley Plan (CVP), and its separate rules for the San Francisco Bay-Delta Estuary, including updates issued in 2014, 2015 and 2016, without reviewing the plans. TUCPs are essentially waivers of existing water quality rules.

The plaintiffs are seeking a court order that would force the state to await EPA approval before acting on any new updates for the Central Valley Plan and the Bay-Delta plan.

The case, which is scheduled to be heard on Aug. 17, could set a precedent by defining when new state requirements constitute a "revised" state water quality standard subject to mandatory EPA review before they can take effect.

Under section 303 of the CWA, EPA is generally required to review new or revised state water quality standards before they take effect. But neither the law, nor EPA's implementing regulations, define when a state standard is "revised" and subject to review.

Instead, the agency has defined the term in its Water Quality Standards Handbook. The most recent handbook, updated in 2012, spells out a four-part test for determining whether standards are "new or revised," including whether it is legally binding, whether it addresses designated uses, water quality criteria and other measures and whether it establishes a new or revised standard.

To make the latter determination, EPA's handbook spells out the "effects test," which holds that a standard is "new or

revised” if it has the effect of changing an existing WQS. “In contrast, a provision that simply implements a WQS without revising it would not constitute a new or revised WQS,” the handbook says.

EPA initially sought to dismiss the environmentalists’ suit, arguing in part that the state orders are not “revised” water quality standards subject to agency review.

But in a Feb. 7 order, Judge Jon S. Tigar rejected EPA’s motion to dismiss the suit, ruling in part that EPA failed to establish that the TUCPs were not subject to mandatory review under the CWA as revisions to previous WQS approved by the federal agency.

EPA, in a [March 24 brief](#), then asked the court for 75 days, until June 7, to assess California’s TUCPs to determine whether they constitute “revised” water quality standards subject to formal review. The agency also suggested that it would like to review the orders using a revised “effects test,” though the judge rejected this move in response to environmentalists’ opposition.



EPA says Indiana Dunes beaches safe after toxic spill

PORTAGE, IN — The EPA says the lake water is safe, even after a company admitted they leaked a toxic chemical into a Lake Michigan tributary this spring.

U.S. Steel accidentally released hexavalent chromium into the Burns Waterway in Portage this April.

The EPA along with the National Park Service needed to determine if that chemical leak would affect visitors and wildlife at the dunes.

Hexavalent chromium is a toxic byproduct of industrial processes. If ingested, it might be carcinogenic.

Scientists have tested hundreds of water and soil samples every week since that spill happened -- and they say there have been no environmental impacts from the release. They've found no significant trace of the industrial chemical within five miles of the leak.

To ensure public safety, the EPA and the park service will continue to test the area through the summer.

Those tests are just one of the things the National Park Service at the Indiana Dunes is doing to ensure their beaches, trails and waterways are safe and ready for millions of visitors this summer.

They have also cleared parking lots covered with tons of sand, rebuilt sand paths and boardwalks down to the beaches, and put buoys out in the water.

A lot of Indiana Dunes visitors say they come to the beach often.

"We only live about 10 minutes away from the beach which is pretty great," says Bradley Hatfield, a Portage Beach visitor.

But the April chemical spill in the Burns Waterway put his summer plans -- and millions of others -- in jeopardy.

"We had a bit of a scare in early April," says Bruce Rowe, Spokesman for the Indiana Dunes National Lakeshore.

Beaches were closed for a weekend to determine if the release of the the toxic hexavalent chromium would affect visitors or the environment.

"Fortunately we found absolutely no traces of it on any of our nearby beaches," says Rowe.

Some 60,000 Wilmington, N.C., residents get their drinking water from the Cape Fear River.

DuPont and its spinoff company Chemours manufacture chemicals at a plant upstream from the city.

The plant is situated on a 2,100-acre property on the Cape Fear River in Fayetteville. It is there where a chemical called GenX -- a potentially cancer-causing substance that is a byproduct of DuPont and Chemours' manufacturing processes -- is produced.

Wilmington residents are demanding to know if those toxic chemicals are making their way downriver into the city's drinking water.

The Cape Fear Public Utility Authority co-authored a three-year study on the chemical's elevated presence in the water. But as CBS News' Jericka Duncan reports, the findings were never made available to the general public -- not even to Wilmington Mayor Bill Saffo.

Saffo met with Chemours officials, and couldn't believe what he heard: "We were alarmed. And we want to know how long that compound or that chemical had been dispersed into the Cape Fear River. And they told us since 1980."

Last week, a city council meeting in Wilmington was over capacity, as neighbors demanded their leaders hold Chemours accountable.

"Why has this been allowed to go on for so long?" asked one citizen, Kalli Smith. "I have been drinking this water my entire life."

Though they aren't pointing fingers at DuPont or Chemours, Wilmington's self-proclaimed "cancer moms" showed up in full force.

Amy Herrman's son, Jacob, had leukemia, and received chemo for three years. "It just seems odd that we're having to fight for clean water after we've fought for our children's lives," Herrman said.

Lisa Grogan's son, Nathan, was diagnosed at age four with Wilms, a rare kidney cancer. "Because of what our kids have been through, I think it's hard for people to look at us and say the water's probably OK, or, there's probably not too much toxin in there to cause health effects," said Grogan.

There are currently no federal drinking water standards for GenX. And because of an EPA rule, Chemours' release of GenX into the Cape Fear River for nearly four decades may have been perfectly legal; that's because it is a byproduct of another substance.

"There is a loophole that needs to be looked at by Congress to make certain that we have safe drinking water in this country," said Mayor Saffo.

The long-term health effects of GenX on humans are unknown, but studies submitted to the EPA by DuPont between 2006 and 2013 show it caused tumors and reproductive problems in lab animals.

The company says GenX is a safer alternative to another DuPont chemical called C8, which it no longer makes.

DuPont was forced to pay the largest fine in EPA history -- \$16.5 million -- for failing to report C8's substantial risk to human health. And this past February, DuPont and Chemours doled out more than \$670 million to settle a class-action lawsuit involving C8 water contamination in the Ohio River Valley.

Jennifer Adams, the vice chair of the Cape Fear Public Utility Authority, was asked why the water company never made its GenX study public.

"There were no alarm bells set off," she said. "There wasn't anything indicated in the report that indicated immediate action was needed."

CBS News has learned Adams worked as a chemical engineer at DuPont from 1990 to 2001.

